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Ravalli County Commissioners

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Beth: Scan + send
to Alex, & George
Corn
(Glenda)

2-8-08

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Greetings:

Re: TAXATION without REPRESENTATION
and THE CONSTITUTION

Taxation without Representation. --- A reason for our revolution.
Later when the United States Constitution was adopted that phrase resulted in the following provision:

"No person shall be deprived of life, liberty or property without due process of law."

In 1954 the Great Northern Railway Co. filed an action wherein they sought to recover money paid pursuant to the provisions of section 11-2008, R.C.M. 1947. It was alleged that this provision of that statute was unconstitutional.

"the board of county commissioners may levy a special tax upon all property within the rural fire district for the purpose of buying or maintaining fire protection facilities."

The reasons:

Lack of due process

The legislature, by the constitution, was given exclusive power to represent the people in determining the amount of a tax levy.

This power cannot be delegated to an executive office.

The taxpayers in the district, by the constitution, have reserved unto themselves power to raise taxes above what is set by the legislature.

On December 3, 1958, the Montana Supreme Court entered the following judgement.(Great Northern Railway Co. vs. Roosevelt County 134 Mont 355.)

"for the foregoing reasons, the weight of authority, and the rules of our jurisprudence it appears beyond question that R.C.M. section 11-2008, and R.C.M. section 11-2009, before the 1957 amendment, was and is unconstitutional as being in direct conflict with section 27, Article III, Montana Constitution and the first clause of the Fourteenth Amendment to the Constitution of the United States of America."

In spite of that Supreme Court judgement none of the executive officers charged by their oath of office to protect the constitution made any effort to abide by the Supreme Court decision. To this day the grant of legislative power given to the County Commissioners by section 11-2008 R.C.M. 1947 has never been changed. It now appears in section 7-33-2109 M.C.A.

The Attorney General, one of the lawyers in the G.N. action, never bothered to remove the unconstitutional statute from the books. None of the executive officers, including those now in office, ever removed the unconstitutional statutes from the books. Neither did they ever advise the County Commissioners that the commissioners did not have power to make a tax levy pursuant to that unconstitutional statute.

Some say rural fire districts are so essential leave the law alone. The Montana Supreme Court must have heard that also for in the decision they said:

"Here it can be honestly argued, that the law would be a beneficial one, and that through its proper application lives and property may be saved, * but there is no excuse nor argument for the violation of the Constitution. *** Whatever reason prompted the legislature to enact these statutes , the intent of the said statutes is plain, and the court may not sanction a violation of the constitution however beneficial such a law may seem."**

What can be done now? Better to ask, **WHAT SHOULD BE DONE NOW?**

By the Governor:

To show his support for the constitution he should call a special session of the legislature and ask them to amend section 7-33-2109 M.C.A.

By the Attorney General:

To show his support for the constitution he should ask the legislature to amend the same section. He should also advise all County Commissioners that they must abide by the Supreme Court judgment and refrain from making that tax levy.

By the County Commissioners.

They should realize they are following an unconstitutional statute and also realize that many of the rural fire districts were organized under an unconstitutional statute.

IS ANYONE HURT BY THESE UNCONSTITUTIONAL STATUTES.

How about SCHOOL DISTRICTS.

The Florence Carlton School District seems unable to get needed tax levy increase from the taxpayers. Here is what happened in 2007. The Florence rural fire district had the tax levy doubled for 2007. The Missoula rural fire district increased the tax levy to 91.130 mills. That increase cost me \$46.85. I live in the Carlton school district but Missoula County has me pay taxes for the Missoula rural fire district. But I vote in the Carlton School levy as do many other Missoula County residents. Some Carlton residents pay to the Florence (Carlton) rural fire district.

My rural fire tax levy is for \$465.86. That is levied pursuant to an unconstitutional tax. (no due process - no tax set by the legislature and no chance for the taxpayers to appear and be heard.) I pay it or Missoula County will take my home for failure to pay taxes. Missoula County permits the Missoula rural fire district to use some of that tax money so they can employ an attorney from Lake County on almost a full time basis for legal work (Montana law says the County Attorney is required to provide legal services without cost to the District taxpayers.) I would prefer to have the Missoula County Attorney do the work and let the Carlton School District have the money.

Gardner